

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
_____, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02 – PLR-106397-08
Date:
July 31, 2008

Legend

X:

A:

State:

d1:

Year 1:

a:

Dear _____:

This responds to a letter dated November 12, 2007, and additional correspondence submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated in State. A, the president and sole shareholder of X, intended for X to be an S corporation effective d1. However, no Form 2553, Election by a Small Business Corporation, was timely filed for X. For the period from d1 through Year 1, X filed Forms 1120S, U.S. Income Tax Return for an S Corporation, under a, an incorrect employer identification number (EIN).

Section 1362(b)(5) provides that if -- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for

such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective d1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective d1 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning d1. A copy of this letter should be attached to the Form 2553. X is not required as a condition for this relief to file amended returns for Year 1 and previous taxable years because of the use of a, an incorrect EIN, but it must file the Form 2553 and all subsequent returns using the proper EIN.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

Michael A. Skeen
Acting Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: